

must, to the extent practicable, identify confidential information by alternative markings using existing attributes within the file or means that are accessible through use of the file's associated program. When alternative markings are used, such as font changes or symbols, the submitter must use one method consistently for electronic files of the same type within the same submission. The method used for such markings must be described in the request for confidentiality. Files and materials that cannot be marked internally, such as video clips or executable files or files provided in a format specifically requested by the agency, shall be renamed prior to submission so the words "Confidential Bus Info" appears in the file name or, if that is not practicable, the characters "Conf Bus Info" or "Conf" appear. In all cases, a submitter shall provide an electronic copy of its request for confidential treatment on any medium containing confidential information, except where impracticable.

(3) Confidential portions of electronic files submitted in other than their original format must be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format must, if practicable, be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format that cannot be marked as described above must, to the extent practicable, identify the portions of the file that are claimed to be confidential through the use of existing indices or placeholders embedded within the file. If such indices or placeholders exist, the submitter's request for confidential treatment shall clearly identify them and the means for locating them within the file. If files submitted in their original format cannot be marked with page or sequence number designations and do not contain existing indices or placeholders for locating confidential information, then the portions of the files that are claimed to be confidential

shall be described by other means in the request for confidential treatment. In all cases, submitters shall provide an electronic copy of their request for confidential treatment on any media containing confidential data except where impracticable.

(4) Electronic media may be submitted only in commonly available and used formats.

[68 FR 44228, July 28, 2003, as amended at 72 FR 59469, Oct. 19, 2007]

§512.7 Where should I send the information for which I am requesting confidentiality?

A claim for confidential treatment must be submitted in accordance with the provisions of this regulation to the Chief Counsel of the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building W41-227, Washington, DC 20590.

[72 FR 59470, Oct. 19, 2007]

§512.8 What supporting information should I submit with my request?

When requesting confidentiality, the submitter shall:

(a) Describe the information for which confidentiality is being requested;

(b) Identify the confidentiality standard(s) under which the confidentiality request should be evaluated, in accordance with §512.15;

(c) Justify the basis for the claim of confidentiality under the confidentiality standard(s) identified pursuant to paragraph (b) of this section by describing:

(1) Why the information qualifies as a trade secret, if the basis for confidentiality is that the information is a trade secret;

(2) What the harmful effects of disclosure would be and why the effects should be viewed as substantial, if the claim for confidentiality is based upon substantial competitive harm;

(3) What significant NHTSA interests will be impaired by disclosure of the information and why disclosure is likely to impair such interests, if the claim for confidentiality is based upon impairment to government interests;

(4) What measures have been taken by the submitter to ensure that the information is not customarily disclosed

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or otherwise made available to the public, if the basis for confidentiality is that the information is voluntarily submitted; and

(5) The information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b).

(d) Indicate if any items of information fall within any of the class determinations included in appendix B to this Part;

(e) Indicate the time period during which confidential treatment is sought; and

(f) State the name, address, and telephone number of the person to whom NHTSA's response and any inquiries should be directed.

Subpart C—Additional Requirements

§512.9 What are the requirements if the information comes from a third party?

Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with §512.4 of this part, including a certificate in the form set out in appendix A to this Part.

§512.10 Duty to amend.

The submitter shall promptly amend any supporting information provided under §512.4 if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided to the agency, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

§512.11 What if I need an extension of time?

If a person is unable to submit the necessary information required under §512.4 at the time the claimed confidential information is submitted to NHTSA, then that person may request an extension of time. Any request for an extension shall explain the reason

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for the extension of time and the length of time requested.

§512.12 What if I am submitting multiple items of information?

Any certificate provided under §512.4(b) of this part, and any supporting information provided under §512.4(c) of this part, may be used to support a claim for confidential treatment of more than one item of information. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that the information is entitled to confidential treatment, and may result in the denial of the claim.

§512.13 What are the consequences for noncompliance with this part?

(a) If the submitter fails to comply with §512.4 of this part at the time the information is submitted to NHTSA or does not request an extension of time under §512.11, the claim for confidentiality may be waived, unless the agency is notified or otherwise becomes aware of the claim before the information is disclosed to the public. If the information is placed in a public docket or file, such placement is disclosure to the public within the meaning of this part and may preclude any claim for confidential treatment. The Chief Counsel may notify a submitter of information or, if applicable, a third party from whom the information was obtained, of inadequacies regarding a claim for confidential treatment and may allow the submitter or third party additional time to supplement the submission, but has no obligation to provide either notice or additional time.

(b) If the submitter does not provide the certificate required under §512.4(b) of this part or any supporting information required under §512.4(c) of this part, or if the information is insufficient to establish that the information should be afforded confidential treatment under the confidentiality standards set out in §512.15 of this part, a request that such information be treated confidentially may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information and may allow